



POLICE DEPARTMENT

December 7, 2022

-----X
In the Matter of the Charges and Specifications :
- against - :
Police Officer Alfredo Alba :
Tax Registry No. 933598 :
Strategic Response Group 2 :
-----X

Case No.

2022-25491

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Brian Arthur, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Stuart London, Esq.
Worth, Longworth, & London, LLP
111 John Street Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Alfredo Alba, while assigned to Strategic Response Group 2, on May 31, 2020, at approximately 2215 hours, in the vicinity of Broadway and East 11th Street, New York County, spoke discourteously to individuals without police necessity, to wit: Police Officer Alba stated toward various individuals within a crowd, "Back the fuck up," "Back up motherfucker." "Keep it moving. Too fucking bad," and "I'm one you do not want to fuck with right now." (*As amended*)

P.G. 203-09, Page 1, Paragraph 2
[now encompassed by A.G. 304-06,
Page 1, Paragraph 2]

PUBLIC CONTACT –
GENERAL
PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION AND
VALUES OF NYPD

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 3, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. CCRB offered a video recording obtained from Respondent's body worn camera in support of the charge. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Not Guilty.

ANALYSIS

The facts in this case are not in serious dispute. The parties stipulated to the admission of CCRB Exhibit 1, a video recording obtained from Respondent's body worn camera, which captured his activity in the area of Broadway and East 11th Street, New York County, on May 31, 2020, at approximately 2215 hours. Respondent was detailed to that location as a member of Strategic Response Group 2. The area to which Respondent was deployed was the site of a civil

disturbance, six days after George Floyd's death, while in police custody, in Minneapolis, Minnesota. Legitimate First Amendment expression occurred simultaneously with criminal behavior, including firebombing, looting and violence toward the police. Respondent testified credibly that he was struck in the head by a bottle and was spared injury because he was wearing a helmet. The parties further agree that Respondent was given an order by his superiors to disperse the crowd.

The issue in this case is whether Respondent's use of the word "fuck" in various iterations, as he employed it during the performance of duty that evening, was discourteous. Based upon the credible relevant evidence, I find that Respondent's use of that word, under these unique circumstances, did not rise to the level of sanctionable misconduct.

The following is a summary of the relevant evidence admitted during the trial.

Respondent testified that he is an 18-year Member of Service. On May 31, 2020, he was assigned to a 1730 by 0205 tour of duty. He recalled being on standby in Manhattan South and being mobilized to various locations because of riots. When he arrived at the location of Broadway and East 10th Street, he testified that he observed 500-1000 protesters, saw fires and heard bottles being thrown (T. 21-24). At some point, Respondent was struck by a bottle, hitting his helmet and falling to the pavement, breaking as it did so (T. 25, 36, 46, 54-55, 56). He admitted that he was aware that any statements he made during his deployment to Broadway and 10th Street would be captured on his body worn camera (T. 74).

Respondent testified that the orders he received from his superiors were to "hold the line," meaning to move protesters back, to keep them on one side of the street, and to ensure that no one got behind the police line (T. 23, 57). He testified further that the protesters were vocal,

with some shouting what he characterized as "anti-police rhetoric," and that they were in the street preventing any traffic from passing (T. 26, 32, 35).

Respondent testified that after he received the order to disperse the crowd, he approached them holding his nightstick in both hands, with his left hand near his head and his right hand near his waist (T. 26-27). He testified that as he advanced toward the crowd, he said, "Back the fuck up," rather than use the nightstick to disperse them (T. 29, 57, 74). Respondent explained that the use of the term was not specifically directed toward anyone; he used the term to make sure the crowd could hear him and follow the order (T. 29-30, 58).

Respondent testified that when he said, "Back up, motherfucker," he intended it to sound "authoritative, and to have people, you know, just push back, move back" (T. 37, 50, 59, 71, 75). He testified that he was also concerned that bottles were being thrown as he was issuing directives to the crowd to move, raising concerns for his safety, as well as the crowd's (T. 39-40).

He testified that in one instance, a woman attempted to move behind the police officers as she was being directed to move out of the street, claiming that she had lost her daughter (T. 30, 60). Respondent admitted that he said, "Too fucking bad," because he believed, based upon the surrounding circumstances, the citizen was being disingenuous and had not actually lost her daughter (T. 30, 41).

In another instance, after much of the crowd had dispersed, several people attempted to get permission to cross the police line for various reasons, claiming that they lived on the other side of the line or that they needed to retrieve a bicycle (T. 31, 44, 62). Respondent testified that he initially responded to an individual protester, "Not right now," but eventually said, "Not right now. I just got hit with [a] bottle. I'm not the one to fuck with" (T. 45, 46, 65). He explained

that he made the statement as a warning that he would place the individuals under arrest if they breached the police line (T. 46, 70). He denied stepping closer to the protester so that no one could hear him (T. 66). Respondent conceded that he never told the protester that he would be subject to arrest if he did not disperse (T. 72).

I find Respondent to be a credible witness. I observed his demeanor as he testified before the Tribunal: I found him candid, forthcoming and logical. His willingness to admit the use of profanity was a factor weighing in favor of his credibility, even though his utterances were captured on video. In the experience of this Tribunal, witnesses do not always accept responsibility for unflattering acts, even when their existence is seemingly indisputable.

Specification: Discourtesy

CCRB alleges that as Respondent attempted to clear Broadway of pedestrians, he used the words and phrases, "Back the fuck up," "Back up, motherfucker," "Keep it moving. Too fucking bad" and "I'm one you don't want to fuck with right now." While Respondent admits that he used the language, as pled in the amended accusatory instrument, he asserts that he never intended to be discourteous.

I find that CCRB has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that on May 31, 2020, near Broadway and East 11th Street, Respondent committed sanctionable misconduct or warrants a penalty.

The video evidence, as well as Respondent's credible testimony, establishes that he was involved in a dynamic environment that had the potential to devolve into chaos without warning. The need to establish physical control over a major thoroughfare during a civil disturbance is obvious: police and other emergency vehicles need unobstructed ingress and egress to the area. The requirement to keep the streets clear advances the interests of all members of the public. In

such a circumstance, providing time for the citizens to deliberate over whether they will comply with police directives is as illogical as it is inefficient. While entertaining a civilian request to explain the basis for the police action may, under other less fraught circumstances, be held up as an example of good policing, in this case, it was counterproductive. Regardless of whether the citizens agreed with, or understood the basis for, the directive to move from the street, they did not have the option to refuse to obey it; any citizens who did so were subject to arrest.

While demonstrators have a constitutionally protected right to protest, once the protest blocked vehicular traffic, police officers had the authority to clear the roadways by forcing pedestrians onto sidewalks. Whether it was the person who claimed she lost her daughter, or the third party who questioned why another civilian could not be permitted to proceed across Broadway to walk to his purported place of residence, in both examples, individuals sought exemptions from being required to remove themselves from Broadway and follow the directions Respondent was giving them.

CCRB's argument that the language was discourteous because Respondent did not first provide the citizens against whom it was directed an opportunity to comply with those directives before uttering it lacks merit. The objective import of the words spoken by Respondent was to communicate that his directive to move from the street was serious; that the directive was to be obeyed immediately; and that failure to obey the directive would carry consequences, including arrest and the use of force to effect it.

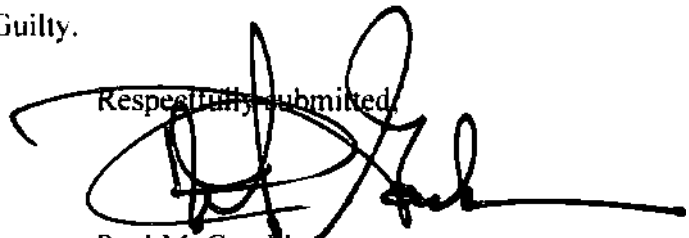
Based upon Respondent's uncontroverted testimony, the civilians on the street during the police action greatly outnumbered the police officers sent to disperse the crowd. It would have been impossible for each police officer present to confront each civilian in order to move the crowd from the street. The most efficient means of establishing physical control over the

roadway was to create an environment where the civilians occupying it believed that it was inevitable that they would have to depart, that no exceptions would be made and that the better course of action was to begin leaving the area without being personally confronted by a police officer.

The various etymological formulations Respondent used that evening were tantamount to unvarnished exhortations to obey the police directives immediately. While the language was harsh, and should not be part of a police officer's normal lexicon, the unique circumstances presented by the necessities of the moment absolve Respondent from discipline for using it.

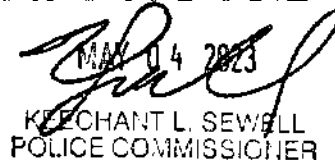
Accordingly, I find Respondent Not Guilty.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', written over the typed name.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

A handwritten signature in black ink, appearing to read 'Keechant L. Sewell', written over the typed name and date.

MAY 04 2023
KEECHANT L. SEWELL
POLICE COMMISSIONER